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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Implementation of Local Competition)
Provisions of the Telecommunications Act)
of 1996)
_____)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket No. 96-98

**SBC'S REPLY TO COMMENTS ON PETITIONS FOR
RECONSIDERATION AND CLARIFICATION**

SBC hereby responds to the oppositions of certain competitive local exchange carriers (CLECs)¹ to BellSouth's and Bell Atlantic's petitions for clarification and partial reconsideration of the Commission's NID and subloop unbundling requirements adopted in the *UNE Remand Order*.²

I. The Commission Should Clarify that the First Carrier to Connect to a Building's Inside Wire is Required to Construct the SPOI.

SBC supports BellSouth's request that the Commission clarify that incumbent local exchange carriers (ILECs) are not required to construct a SPOI where the incumbent does not own or control facilities.³ In the *UNE Remand Order*, the Commission required incumbent local exchange carriers to construct a single point of interconnection (SPOI) at multiunit premises that is suitable for use by multiple carriers.⁴ The Commission further stated in footnote 442 that the "incumbent is obligated to

¹ See Opposition of MCI WorldCom, Inc. (MCIW), Opposition and Comments of AT&T Corp., Comments of MediaOne Group, Inc., Comments of Sprint Corp., Comments of Teligent, Inc.

² *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238 (rel. Nov. 5, 1999) (*UNE Remand Order*).

³ BellSouth Petition at 4-5.

⁴ *UNE Remand Order*, FCC 99-238 at para. 226; 47 C.F.R. § 51.319(a)(2)(E).

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construct the single point of interconnection whether or not it controls the wiring on the customer premises."⁵ This statement, as BellSouth aptly observes, could be read to require ILECs to construct a SPOI in locations where they do not own any facilities.⁶ The Commission should, as BellSouth requests, clarify that this was not its intent, and that an ILEC is required to construct a SPOI only "where the incumbent controls facilities at, or running to, the end user."⁷

As competition in local markets has grown, CLECs increasingly are the first carriers to wire sub-divisions, campuses, and other multi-unit premises. A second carrier (whether the ILEC or another CLEC) seeking to serve customers in such premises generally is forced to use the CLEC's wiring to serve those customers. In that circumstance, the first CLEC, not the ILEC, should be required to construct the SPOI.

Absent BellSouth's proposed clarification, the Commission's order could be interpreted to require an ILEC to reconfigure CLEC facilities to construct a SPOI so that another CLEC can access wiring on a customer's premises, even if the ILEC does not own or control any facilities at or to the customer's location. As GTE points out, the Commission "cannot have intended ILECs to serve as construction companies for CLECs," and the Act does not so require.⁸ Indeed, as BellSouth observes, the D.C. Circuit's decision in *GTE v. FCC* confirms that an ILEC cannot be required to construct a

⁵ *UNE Remand Order*, FCC 99-238 at para. 226 n. 442.

⁶ BellSouth Petition at 5.

⁷ BellSouth Petition at 5.

⁸ GTE Comments at 7.

SPOI or other facilities to permit one CLEC to access the facilities of another.⁹ In that case, the D.C. Circuit vacated the Commission's cross-connects rule, which required ILECs to permit collocated CLECs to interconnect their equipment with the facilities of other collocated carriers.¹⁰ The court found that section 251(c)(6) is "focused solely on connecting new competitors to LEC's networks," and therefore that the "cross-connects requirement . . . has no apparent basis in the statute."¹¹ Likewise, sections 251(c)(1) and 251(c)(2) require ILECs to provide access and interconnection to their own networks, not those of other carriers.¹² As such, the Commission cannot, pursuant to section 251, require ILECs to construct a SPOI to permit one CLEC to access the facilities of another carrier, even if it did so intend.

Both AT&T and Teligent oppose BellSouth's proposed clarification. Teligent asserts that, where an ILEC owns or controls facilities in a building, it owns or controls facilities to which a requesting carrier may need interconnection, even if such facilities do not run to an end user, and that a SPOI is necessary to accomplish such interconnection.¹³ For its part, AT&T asserts that BellSouth's clarification is not necessary. It argues that, read in context, footnote 442 "merely mean[s] that ownership and control over facilities other than premises wiring can give rise to the duty to construct a single point of

⁹ BellSouth Comments at 4-5, citing *GTE v. FCC*, No. 99-1176, 2000 U.S. App. LEXIS 4111 (D.C. Cir. Mar. 17, 2000) (*GTE v. FCC*).

¹⁰ *GTE v. FCC*, 2000 U.S. App. LEXIS 4111 at * 20-22.

¹¹ *Id.* at *21.

¹² See 47 U.S.C. §§ 251(c)(1) and (c)(2).

¹³ Teligent Comments at 8.

interconnection, even where the wires themselves are not owned or controlled by the incumbent. No clarification is necessary to reinforce this obvious point."¹⁴

Although they oppose BellSouth's clarification, neither AT&T nor Teligent disagree with BellSouth's position that an ILEC should not be obligated to construct a SPOI where the premises were wired by another carrier and the ILEC has no facilities.¹⁵ Based on the obvious ambiguity in the language of footnote 442, and the consensus among the parties that ILECs should not be required to construct a SPOI at multi-unit premises that were wired by another carrier, the Commission should grant BellSouth's requested clarification.

II. The Commission Should Reconsider Its Requirement that ILECs Must Provide Direct Access to the NID.

SBC agrees with Bell Atlantic and BellSouth that the Commission failed adequately to justify its decision in the *UNE Remand Order* to permit a requesting carrier to connect its loops directly to an incumbent's NID.¹⁶ In the *Local Competition Order*, the Commission found that it lacked sufficient evidence in the record to conclude that unmediated access to an ILEC's NID is technically feasible based on evidence proffered by Ameritech that a direct connection would leave ILEC loops without overvoltage

¹⁴ AT&T Opposition at 15. Whatever AT&T's point is, it is far from obvious, and simply reinforces the need for clarification of footnote 442.

¹⁵ AT&T Comments at 15 ("AT&T agrees that an incumbent should have no obligation to construct a single point of interconnection," where "the incumbent has no facilities because all the premises were wired by another carrier"); Teligent Comments at 8 ("where the ILEC maintains no facilities at all on a multi-unit premises, there is little reason to require it to construct a single point of interconnection").

¹⁶ Bell Atlantic Petition at 11-13; BellSouth Comments at 8-10.

protection.¹⁷ It therefore concluded that a requesting carrier could connect its own loop to the ILEC's NID only through an adjoining NID deployed by such carrier.¹⁸

On remand, the Commission reversed course and required ILECs to "permit a requesting carrier to connect its own loop facilities to the inside wire of [a] premises through the incumbent LEC's network interface device"¹⁹ without any explanation or discussion of the technical implications of permitting direct access to an ILEC's NID. Instead, the Commission focused solely on the increase in cost and potential delay in market entry that the Commission thought would result if requesting carriers were required to self-provision NIDs for customers whom the CLECs seek to serve with their own loop facilities.²⁰

To be sure, the Commission may alter its regulatory policies. But, as Bell Atlantic points out, it may not do so without any explanation or reasoned analysis of the

¹⁷ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, 15698 (1996) (*Local Competition Order*).

¹⁸ *Local Competition Order*, 11 FCC Rcd at 15697, para. 392 ("a requesting carrier is entitled to connect its loops, via its own NID, to the incumbent LEC's NID"). The Commission left it to states to determine whether direct connections to the NID can be achieved in a technically feasible manner in the context of specific requests by competitors. *Id.* at 15699, para. 396.

¹⁹ *UNE Remand Order*, FCC 99-238 at para. 237; 47 C.F.R. § 51.319(b).

²⁰ *Id.* at para. 232. Even if purported increases in cost and delays in market entry could justify disregarding the technical feasibility issues implicated by direct access to the ILEC's NID, the Commission's analysis of these factors makes no sense. Although it acknowledged that NID hardware is widely available and inexpensive (*UNE Remand Order*, FCC 99-238 at para. 239), the Commission concluded that CLECs would be impaired if they had to self-provision NIDs "because of the significant labor and construction costs involved in visiting the premises of each customer and installing the device." *Id.* at para. 238. But the only time a CLEC might need unbundled access to an ILEC's NID is if it were to deploy its own loop facility, which would require a truck roll to install the loop and connect it to the customer's inside wire through the ILEC's NID. In that case, the cost of deploying the NID itself would be paltry in comparison to the labor and construction costs incurred in deploying the loop. It is simply inconceivable that a facilities-based CLEC with the resources to deploy its own loop facility could not also deploy its own NID.

basis for the change.²¹ Because the *UNE Remand Order* is devoid of any analysis of the technical implications of permitting direct access to ILEC NIDs, the Commission should, as Bell Atlantic requests, reconsider the NID unbundling requirements adopted in the *UNE Remand Order*.²²

Several CLECs urge the Commission to deny Bell Atlantic's request.²³ However, all but one of these parties fails to address in even the most cursory fashion the technical issues raised by Bell Atlantic. Rather, they simply parrot the Commission's flawed analysis regarding the costs and potential delays in market entry that purportedly would result if a CLEC was required to self-provision NIDs, while ignoring the technical issues discussed in Bell Atlantic's petition.²⁴

In contrast, MCI WorldCom – the only CLEC that addresses the technical concerns raised by Bell Atlantic – recognizes the legitimacy of those concerns. Indeed, it specifically acknowledges that direct access to an ILEC's NID could damage the ILEC's network due to overvoltage, but claims that overvoltage will rarely be a problem because CLECs generally will deploy fiber loops, which will ground in the terminating box rather than the NID.²⁵ It further asserts that the Commission could resolve the overvoltage problem without requiring CLECs to provide a NID in every situation by requiring

²¹ Bell Atlantic Petition at 13 (citing *Motor Vehicle Mfrs. Ass'n of the United States, Inc. v. State Farm Mutual Auto Ins. Co.*, 463 U.S. 29, 42 (1983)).

²² Bell Atlantic Petition at 13. See also BellSouth Comments at 9-10.

²³ Sprint Comments at 9, MediaOne Comments at 2, AT&T Comments at 12-13, and MCIW Comments at 11-12.

²⁴ See MediaOne Comments at 2, AT&T Comments at 12-13, and Sprint Comments at 9.

²⁵ MCIW Comments at 11.

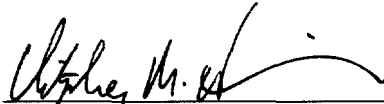
CLECs that deploy copper loops to ground the ILEC's loop if there are no spare terminals in the ILEC's NID.²⁶

SBC believes that MCI WorldCom's proposal would largely resolve concerns about the risk of overvoltage resulting from direct access to the NID. But, irrespective of whether the Commission adopts MCI WorldCom's proposal or reinstates its prior rule, the Commission cannot simply ignore the technical issues that led it to adopt the prior rule requiring a CLEC to connect a loop to the ILEC's NID only through an adjoining NID. Because it did, the Commission should reconsider its rule requiring unmediated access to the ILEC's NID.

CONCLUSION

For the reasons set forth above, the Commission should clarify that an ILEC need not construct a SPOI at multi-unit premises that were wired by another carrier, and reconsider its decision to permit CLEC's to connect their own loops directly to the ILEC's NID.

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²⁶ MCIW Comments at 12 ("[W]here a CLEC deploys copper and there are no spare terminals on the ILEC NID . . . the CLEC simply should be required to ground the ILEC's unused loops and its own loops to protect against overvoltage. The CLEC will have to deploy its own NID or find some other means for grounding the ILEC and CLEC loops.").

CERTIFICATE OF SERVICE

I, Anisa A. Latif, do hereby certify that a copy of **SBC's Reply to Comments on Petitions for Reconsideration and Clarification** has been served on the parties attached via postage-prepaid on this 5th day of April 2000.

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